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3   **E-filed on**:   4/9/09

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7   IN THE UNITED STATES DISTRICT COURT

8   FOR THE NORTHERN DISTRICT OF CALIFORNIA

9   SAN JOSE DIVISION

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11   WILLIAM B. BURLEIGH   No. C-07-02332 RMW

12   Plaintiff,

13   v.   ORDER GRANTING DEFENDANT'S
                                              MOTION FOR SUMMARY JUDGMENT
14   COUNTY OF MONTEREY, A Public Entity,
     and DOES 1 to 20
15   **[Re Docket No. 121]**
              Defendants.
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19   Presently before the court is defendant County of Monterey's renewed motion for summary

20   judgment on plaintiff's two remaining claims for relief, the second cause of action for denial of equal

21   protection and the third cause of action for deprivation of due process. The motion came on for

22   hearing before the court on March 27, 2009. Having considered the papers submitted by the parties

23   and for good cause appearing, defendant's motion is granted.

24   In opposing defendant's motion for summary judgment, plaintiff had the burden of presenting

25   specific facts showing there to be a genuine issue for trial. Fed. R. Civ. P. 56(e); Celotex Corp. v.

26   Catrett, 477 U.S. 317, 324 (1986). Plaintiff has not done so.

27   With regard to plaintiff's second cause of action for denial of equal protection, plaintiff has

28   not come forward with evidence to establish a genuine issue of material fact on the equal protection

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT
 — No. C-07-02332 RMW
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1   claim: he has not identified evidence to show he is a member of a suspect class, nor has he identified

2   evidence that he has been treated differently than anyone else in the County (i.e., that other similarly

3   situated property owners have been allowed to build second units whereas he has been denied that

4   ability). Accordingly, the claim fails as a matter of law, and defendant is entitled to summary

5   judgment.

6   Similarly, plaintiff has also failed to identify any evidence to support his third cause of action

7   asserting a deprivation of due process. The petition alleges that plaintiff was denied due process

8   when the County "falsely stated that his property was not zoned residential and urged him to appeal

9   that decision." ¶14. The county argues that the claim fails because plaintiff has no constitutionally

10 protected right that has been violated. Applying for a building permit does not afford a protected

11 property right, and without a protected right, there can be no denial of due process. Moreover, even

12 if plaintiff had identified a protected property right, in order to establish a substantive due process

13 claim, plaintiff would have to establish that the County's determination that the Second Unit Law did

14 not apply to property zoned Watershed and Scenic Conservation was "clearly arbitrary and

15 unreasonable, having no substantial relation to the public health, safety, morals or general welfare."

16 See Airtouch Cellular v. City of El Cajon, 83 F. Supp. 1158, 1170 (S. D. Cal. 2000). Plaintiff has

17 failed to do so. Accordingly, defendant is entitled to summary judgment.

18   For good cause appearing for the foregoing reasons, defendant County of Monterey's motion

19 for summary judgment is GRANTED.

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24 DATED: 4/9/09

      RONALD M. WHYTE

25   United States District Judge

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1   **Notice of this document has been electronically sent to:**

2   **Counsel for Defendants:**

3   Frank G. Tiesen   tiesenf@co.monterey.ca.us

4   Kathryn Reimann   reimannk@co.monterey.ca.us

5

6   Counsel are responsible for distributing copies of this order to co-counsel, as necessary.

7

    A copy of this order has been mailed to:

8

9   **Plaintiff (pro se):**

10 William Burleigh
    1 Paso Hondo
11 Carmel Valley, CA 93924

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    DATED: 4/9/09   TER
13   Chambers of Judge Whyte

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